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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/698,333	10/31/2003	Gordon J. Bye	1346.009US3	9680
21186	7590	08/03/2004	EXAMINER	
SCHWEGMAN, LUNDBERG, WOESSNER & KLUTH, P.A. P.O. BOX 2938 MINNEAPOLIS, MN 55402			ASSOUAD, PATRICK J	
			ART UNIT	PAPER NUMBER
			2857	

DATE MAILED: 08/03/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)	
	10/698,333	BYE ET AL.	
	Examiner	Art Unit	
	Patrick J Assouad	2857	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 25 June 2004.
- 2a) ☐ This action is FINAL.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 38-57 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 38-57 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
     Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.  
     If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
     a) ☐ All    b) ☐ Some \*    c) ☐ None of:  
         1. ☐ Certified copies of the priority documents have been received.  
         2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
         3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
     \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).  
     a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                  | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____  |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)         | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ | 6) <input type="checkbox"/> Other: _____                                    |

## DETAILED ACTION

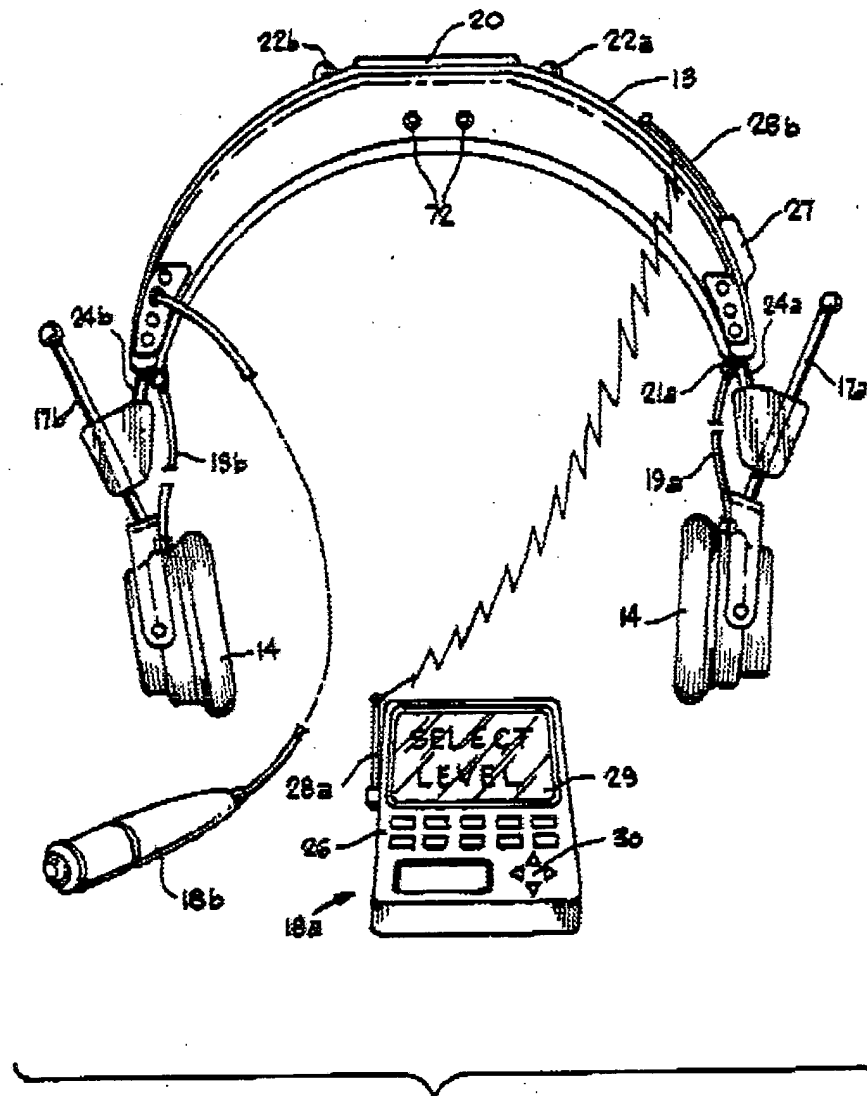
### *Claim Rejections - 35 USC § 103*

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

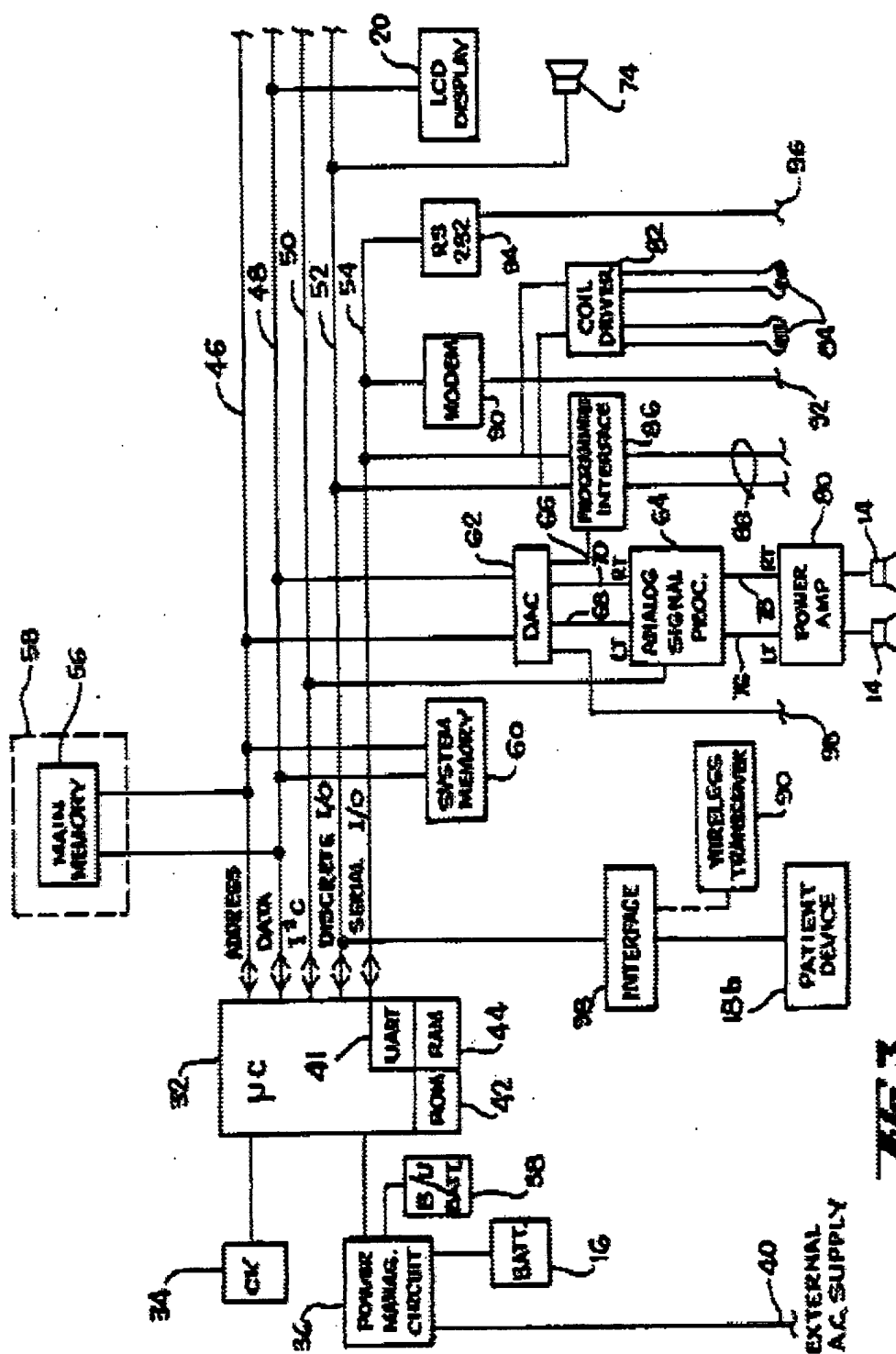
(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 38-57 are rejected under 35 U.S.C. 103(a) as being unpatentable over **Shennib** ('332) published 3/30/93 in view of **Lichter et al.** ('179) published 10/27/98 and filed 2/28/97.

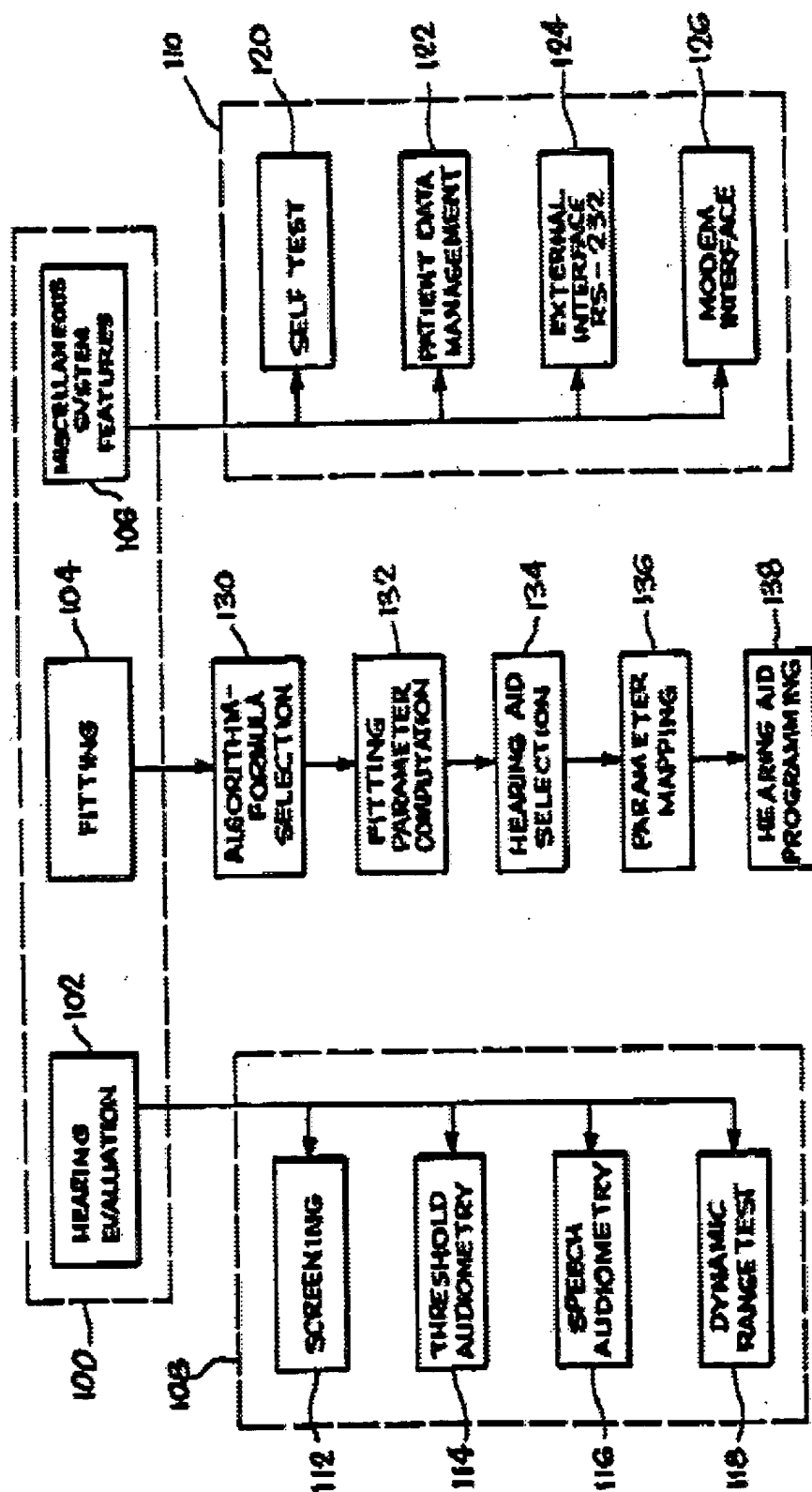
3. **Shennib** substantially discloses the instant claimed invention. See at least Figs 2-4 of **Shennib** reproduced below. In these Figures, we see: a portable host, a programmer for programming a programmable hearing aid, a device for generating test signals for evaluating the hearing response of a person, and finally, wireless or RF or infrared or ultrasonic communications.



***Fig. 2***



**Fig. 3**



**Fig. 4**

4. The difference between the instant claimed invention and that of **Shennib** lies in the claimed *separate* "first card" and "second card". Note that the memory module(s) of **Shennib**, element 56, is/are "compatible with JEIDA standards" which is/are comparable to PCMCIA standards. It also appears that memory card 25 (col. 5, para. 1, lines 3-7) is similar in nature.

5. **Lichter et al.** disclose a personal computer card for collection for real-time biological data. Fig. 2 of **Lichter et al.** is reproduced below. More particularly, they disclose in col. 6, para. 2, lines 33-64:

Although the embodiment of FIG. 2 is shown comprising a pressure sensor 32 and a disposable spirometry mouthpiece 21, any biological data sensor and/or associated components may be incorporated into the real-time biological data processing PC card 10. As presently preferred, each biological data sensor, having a different format of biological data, is configured in a separate real-time biological data processing PC card. The various real-time biological data processing PC cards are interchangeable, to thereby configure the host personal computer 27 into various real-time biological data collecting and processing modes. Alternatively, a single real-time biological data processing PC card 10 may be configured to accommodate one or more different types of biological data sensors. According to the present invention, various interchangeable real-time biological data processing PC cards can configure the host personal computer 27 into various collecting, processing, and monitoring modes, including spirometry, electrocardiography (including resting, 24-hour, stress testing, signal averaging, event ECG, and heart-rate variability), blood pressure, body temperature, electroencephalography (EEG), echocardiography, Doppler, pulse oximetry (SPO2), sleep analysis, tcPO2, tcPCO2, nitrogen dioxide, capnography, respiratory rate, pulse rate, polysomnography, carbon monoxide, gastroesophageal pH, hydrogen, nitric oxide, body composition, glucometer, **audiometry**, plethysmograph, weight, electromyography, urometry, and tympanometry, for example. Other biological data may also be collected and processed by the host personal computer 27, after being configured by a corresponding real-time biological data processing PC card. [emphasis added]

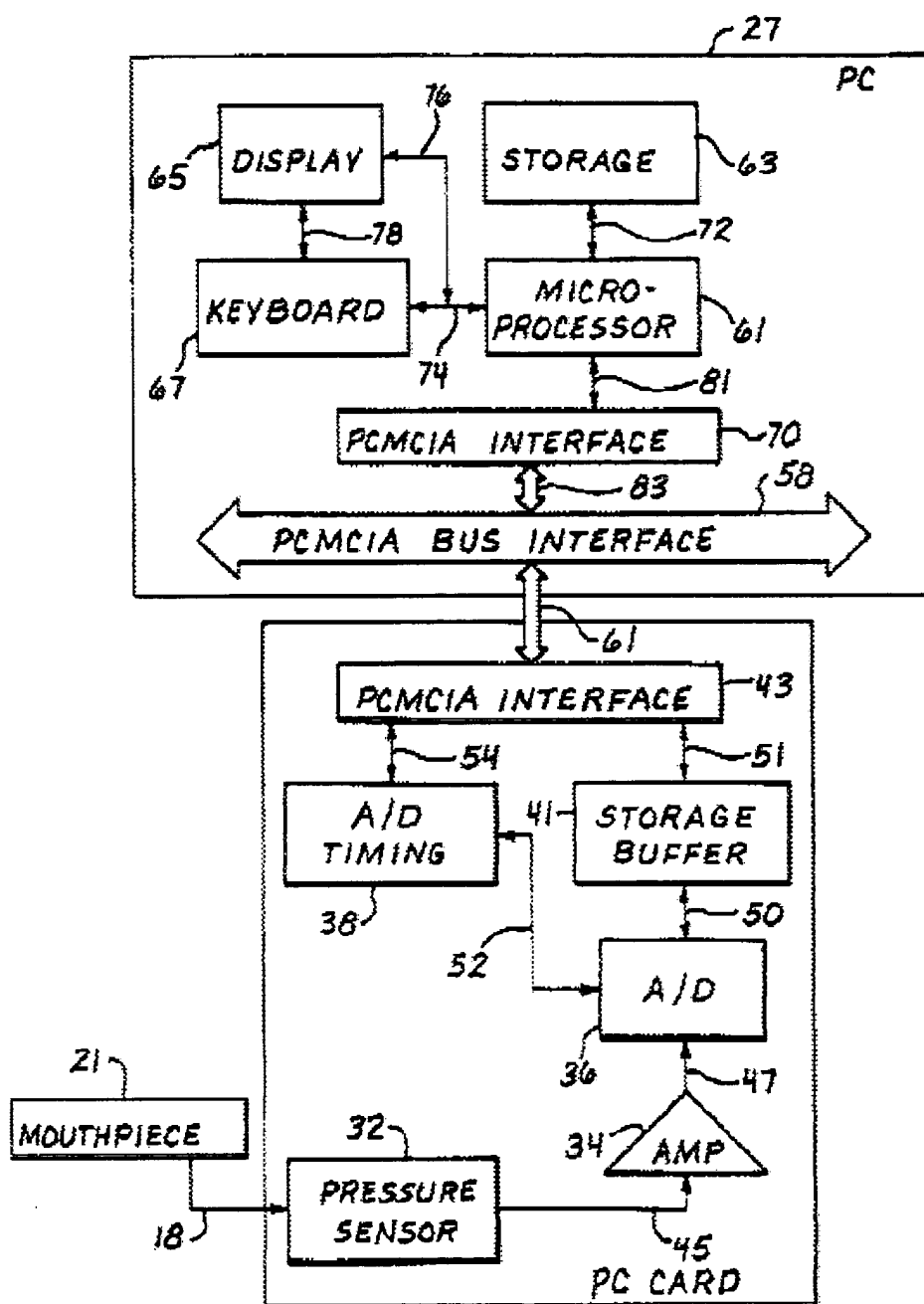


FIG. 2



6. Thus, it would have been obvious to one having ordinary skill in the art at the time the invention was made to incorporate the multiple PC (PCMCIA or JEIDA) card teaching of **Lichter et al.** into the portable headset hearing tester and hearing aid programmer of **Shennib** because PC cards, by their very nature, may be configured separately, and may be used to add functionality to any portable host computer, including a computer utilized in the audiometric field. See the cited passage (above) of **Lichter et al.** for this explicit motivation to combine found in the art itself.

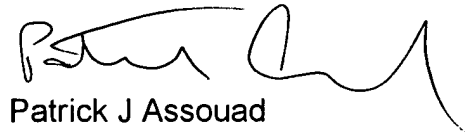
### ***Conclusion***

7. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. See the art cited on form PTO-892.

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Patrick J Assouad whose telephone number is 571-272-2210. The examiner can normally be reached on Tues-Friday 6:30am-5:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Marc S Hoff can be reached on 571-272-2216. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Patrick J Assouad  
Primary Examiner  
Art Unit 2857

pja